

4. The various technical staff reports of the responding and reviewing agencies;
5. The General Plan for Howard County;
6. The General Plan of Highways;
7. The Petition and Plat and materials submitted.

The following individuals testified in support of the Petition: Jeffrey Underwood, Shari Underwood, Cathy Stefano, Kelley Monkevich, and Joshua Moody.

The Petitioner submitted six exhibits in support of his request:

1. Department of Public Safety & Correctional Services sex offender registry list;
2. (A,B,C) Photographs of the fence;
3. Final Plat of Clemens Square;
4. Department of Public Works survey;
5. Aerial photograph of subject property and surrounding properties;
6. Aerial photograph of subject property and surrounding properties.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property, known as 6551 Walnut Grove, is located in the 4th Election District. It is identified on Tax Map 36, Grid 19, as Parcel 442, Lot 23 (the "Property"). The Petitioner is the owner of the subject property which contains approximately .228 acres and is zoned R-12 (Residential-Single).

2. The property is improved by a split level aluminum and brick-sided house that is approximately 45' wide and 54' deep. The house has an attached two-car garage which is

accessed by a 20' wide concrete driveway. A five-foot privacy fence encloses the side and rear yard from the abutting Martin Road.

3. All adjacent properties are also zoned R-12. The property to the east across Martin Road is a wooded portion of a property used for a religious facility. All other adjacent lots are other single-family residential lots fronting on Walnut Grove.

4. The Petitioner requests a variance from Section 109.D.4.a.(1)(a) of the Zoning Regulations to reduce the required 30-foot setback to approximately 8.5 feet from a collector public street right-of-way.

5. Jeffrey Underwood testified that he is requesting a variance for the five-foot privacy fence. Mr. Underwood testified that when he installed the fence, he did not know a variance was necessary. The purpose of the fence is to enclose his side and rear yard to provide screening from traffic on Martin Road and provide a safe, usable yard for his children. The required 30- foot side setback would practically eliminate usage of his rear and side yards. Mr. Underwood submitted documentation and exhibits that confirmed the shallowness of the Petitioner's rear yard relative to vicinal properties. Other evidence submitted to the Board by Mr. Underwood confirmed the parcels' odd shape due to existing street patterns.

6. Shari Underwood testified that a closed privacy fence protects her children when they are playing in the yard from rocks generated from traffic coming from the abutting Martin Road.

7. Cathy Stefano, a nearby resident, testified that she supports the Petitioner's variance request for the closed fence.

8. Kelley Monkevich, a resident of 6565 Walnut Grove, testified that she is in support of the variance request.

9. Joshua Moody, a resident of 6555 Walnut Grove, stated that he can see the fence from his residence and that he has no problem with views of the fence.

CONCLUSIONS OF LAW

1. The Board concludes that the narrowness of the lot and the location of the lot at the intersection of two streets constitute unique physical conditions that result in practical difficulties in complying strictly with the setback provisions of the Regulations, in accordance with Section 130.B.2.a(1).

2. The granting of the variance will enable the Petitioner to make a reasonable and common use of his yard. The fence is located on a small percentage of the overall property. Neither the nature nor the intensity of the use of the lot as residential property will substantially change. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arise from the shallowness of the lot and its location at the intersection of two rights-of-way, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. Because of the above-mentioned physical conditions, erection of the fence at any other location on the lot is impractical. The fence encloses only a small portion of the entire property from the abutting Martin Road. As such, within the intent and purpose of the regulations, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 11th day of October, 2007, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Jeffrey Underwood, for a variance to reduce the 30-foot setback from a collector street right-of-way to approximately 8.5 feet for a five-foot closed fence in the R-12 (Residential – Single) Zoning District is hereby **GRANTED**, subject to the following condition:

1. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

Ann Nicholson
Ann Nicholson, Secretary

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

Barry M. Sanders
Barry M. Sanders
Assistant County Solicitor

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